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IN THE

Supreme Court of the United States

WILLIAM OVERTON, Director,
Michigan Department of Corrections;
MICHIGAN DEPARTMENT OF CORRECTIONS,
Petitioners,

vs.

MICHELLE BAZZETTA, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

1) Whether prisoners have a right to non-contact visitation protected by the First and Fourteenth Amendments.

2) Whether the restrictions on non-contact prison visitation imposed by the Michigan Department of Corrections are reasonably related to legitimate penological interests.

3) Whether the restrictions on non-contact prison visitation imposed by the Michigan Department of Corrections constitute cruel and unusual punishment in violation of the Eighth Amendment.

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BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a non-profit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the due process protection of the accused into balance with the rights of the victim and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

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1. This brief was written entirely by counsel for *amicus*, as listed on the cover, and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief.

   Counsel for Petitioners and for Respondents Michelle Bazzetta, et al., have consented to the filing of this brief. Counsel for Sons and Daughters of the Incarcerated has informed counsel for CJLF that they are filing as an *amicus* rather than a party to this case.

Managing prisons safely and efficiently is a difficult and essential task. Prison is by far the most pervasive form of serious punishment for criminal conduct, making it vital to public safety. The unnecessary creation of prisoners' rights by the judiciary threatens effective prison administration. These rights undercut discipline and add to the costs of running prisons. Burdensome rights can make imprisonment so expensive that criminals are released early or punished through less expensive means, frustrating society's efforts to protect itself through the deterrent and incapacitative effects of prison.

The Sixth Circuit's decision to create a right to visitation is an example of this type of dangerously unnecessary right. Scarce resources will be spent on supervising visits, even more burdensome litigation will ensue, and the ability of administrators to enforce discipline by sanctioning infractions will be curtailed if the right to visitation is upheld. This threatens public safety by making punishment unnecessarily expensive, and threatens to increase drugs and violence in prison. These threats to our system of punishment are contrary to the rights of victims and society which CJLF was formed to protect.

SUMMARY OF FACTS AND CASE

In 1995, the Michigan Department of Corrections (MDOC) promulgated new visitation regulations in response to an increased growth in prison population and the resulting increase in visitors. *Bazzetta* v. *McGinnis*, 286 F. 3d 311, 315 (CA6 2002). Those regulations, (1) banned visits from minors other than the inmates' children, stepchildren, and grandchildren; (2) banned visits from the inmates' children when the inmates' parental rights had been terminated; (3) banned visits from former inmates who were not immediate family members; (4) required visiting children to be accompanied by a parent or guardian; and (5) indefinitely banned visitors, with the exception of attorneys and clergy members, for inmates who violated

MDOC's substance abuse policies on two or more occasions. *Ibid.*

The rationale behind promulgating the first four listed regulations was twofold. First, the increase in visitors made it difficult for the prison guards to supervise visitation, thus making it difficult to prevent the smuggling of drugs and weapons. *Ibid.* Second, the prison guards also found it difficult to supervise the increased number of children visiting and prison officials believed that the prison environment was bad for them. *Ibid.* The visitation ban was implemented as part of a "zero tolerance" approach to drug abuse and was intended to punish those who violated MDOC's substance abuse policies. *Id.*, at 321. The ban provided that inmates found guilty of two or more substance abuse major misconduct violations would lose all visitation privileges for a minimum of two years, upon approval of the Director. *Id.*, at 321, n. 2. After two years, the inmate could request reinstatement of visiting privileges, which again must be approved by the Director. *Ibid.*

There are two forms of visitation permitted by the MDOC —contact and non-contact. *Id.*, at 315. Contact visits occur in meeting rooms supervised by prison guards and allow physical contact between the visitor and inmate. *Ibid.* Non contact visits occur in a room separated by a clear window with all communication taking place over a telephone. *Ibid.*

In 1995, the respondents, a class of inmates incarcerated at defendant MDOC and their prospective visitors, filed suit challenging the new regulations as violative of their First, Eighth, and Fourteenth Amendment rights. *Ibid.* The District Court denied the respondents' motion for a preliminary injunction. See *Bazzetta* v. *McGinnis*, 902 F. Supp. 765, 773 (ED Mich. 1995). The court did not rule on the respondents' challenge to the permanent ban due to lack of ripeness. See *id.*, at 772. In an unreported decision, the District Court later granted MDOC's motion for summary judgment. See App. To Pet. for Cert. 143a-159a. The Sixth Circuit upheld the District Court's grant of summary judgment. *Bazzetta* v. *McGinnis*,

124 F. 3d 774, 781 (CA6 1997). The Sixth Circuit then issued a supplemental opinion to clarify that its earlier ruling only applied to contact visits. See *Bazzetta* v. *McGinnis*, 133 F. 3d 382, 383-384 (CA6 1998). This Court denied review of that decision. See *Bazzetta* v. *McGinnis*, 524 U. S. 953 (1998).

The respondents subsequently brought this suit challenging the regulations as they apply to non-contact visits. The District Court ruled in favor of the respondents, holding that the regulations violated their First Amendment right of intimate association and were not reasonably related to any valid penological objective. See *Bazzetta* v. *McGinnis*, 148 F. Supp. 2d 813 (ED Mich. 2001). The District Court also held that the regulation banning visitation violated the Eighth Amendment's cruel and unusual punishment prohibition and the Fourteenth Amendment's Due Process Clause. *Ibid.* The Sixth Circuit affirmed. 286 F. 3d at 324. This Court granted Michigan's certiorari petition on December 2, 2002.

SUMMARY OF ARGUMENT

The First Amendment freedom of association does not protect family visitation because it is grounded in belief and expression. The Sixth Circuit's mixing of First Amendment and substantive due process concepts detracts from the clarity needed in this contentious area of the law. Incidental expressive activity is insufficient to invoke constitutional scrutiny of the regulation of a group. Although important, intimate association has nothing to do with the presence of a collective voice in the marketplace of ideas. The right to intimate association is protected by substantive due process, and should be analyzed under that doctrine.

Substantive due process is a difficult doctrine. Lacking any textual moorings, it runs the risk of being a vehicle through which the personal preferences of individual judges are transformed into law. This Court is therefore reluctant to expand substantive due process.

This reluctance should be heightened in the context of prison litigation. Prisons are at the center of the most important government function, public safety. The great difficulty of running this vital institution has led this Court to give considerable deference to prison administrators. Unfortunately, lower courts too often fail to pay the appropriate deference and wind up micromanaging prisons to the detriment of prisoners and society. Importing open-ended substantive due process concepts into prison life can only expand judicial meddling.

For the purpose of substantive due process, prison visitation is a privilege, not a right. The only possible support for this right, *Moore* v. *East Cleveland*, 431 U. S. 494 (1977), does not extend into prison. The split decision dealt with a zoning ordinance, not prison regulations, and provides no holding broader than its material facts.

History and tradition supports the lack of precedent for any right to visitation. There was no visitation in early prisons, and even after reforms, prisons would remove visitation privileges for disciplinary reasons. Even today, visitation is often heavily regulated and frequently very difficult for families. Also, this Court has repeatedly upheld regulations limiting prison visitation. Prison visitation simply is not "implicit in the concept of ordered liberty." Visitation therefore cannot be a fundamental right. Since any inquiry under the "shocks the conscience standard" is better left to Eighth Amendment analysis, the regulations do not violate due process.

Withdrawal of the prisoners' visitation privileges for twice violating prison substance abuse policies does not violate the Eighth Amendment. These policies are consistent with both the objective and subjective components of the relevant Eighth Amendment inquiry. The objective component requires an extreme deprivation of life's necessities, such as food, medical attention, or reasonable safety. A loss of family visitation is an inherent consequence of imprisonment. When an inmate violates prison rules, a further loss of visitation is a logical punishment. The fact that the withdrawal may seem restrictive

or harsh does not change the analysis, as it is simply part of the penalty that offenders pay for their crimes against society. Since the ban is indefinite rather than permanent, and only applies to repeat offenders, any constitutional deprivation is ameliorated.

The Michigan officials did not act with the deliberate indifference necessary to satisfy the subjective portion of the Eighth Amendment standard. There is no evidence that the officials subjectively knew that withdrawing visitation privileges for a two-year minimum posed a substantial risk of serious harm to the inmates' health or safety and knowingly exposed prisoners to that risk. A lack of action here will not lead to death or injury, it will simply further the loss of visitation that comes with imprisonment. Since the regulation is objectively and subjectively reasonable, it satisfies the Eighth Amendment.

ARGUMENT

I. The First Amendment freedom of association does not protect family visitation.

The Court of Appeals' decision in the present case refers to a "First Amendment right of intimate association." See *Bazzetta* v. *McGinnis*, 286 F. 3d 311, 316 (CA6 2002). The court mistakenly conflated two distinct principles. While there is a First Amendment right to expressive association and there are constitutional protections for intimate family association, these rights arise from different parts of the Constitution. First Amendment association protects expression and belief, while family association protects other interests outside the First Amendment. While the source of the latter right is less than crystal clear, it appears these interests are protected by substantive due process, and the regulation should be analyzed under this branch of constitutional law. While the Sixth Circuit also cites substantive due process cases in support of its holding, see

id., at 317 (citing *Moore* v. *East Cleveland*, 431 U. S. 494 (1977) and *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925)), it does not change the decision's First Amendment focus. The mixing of First Amendment and substantive due process concepts detracts from the clarity needed in this contentious area of law. The rights to " 'expressive association' " and " 'intimate association,' " see *Dallas* v. *Stanglin*, 490 U. S. 19, 25 (1989), are different and should be treated separately.

The First Amendment right to expressive association was first explicitly recognized in *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449 (1958). From its inception, it has been a right grounded in belief and expression.

> "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *Id.*, at 460 (citations omitted).

The beliefs protected by this right are broad, "political, economic, religious, or cultural matters," *ibid.*, but the First Amendment associational right is still grounded in the core First Amendment values—protecting participation in the "marketplace of ideas." See *Widmar* v. *Vincent*, 454 U. S. 263, 267-268, n. 5 (1981).

The difference between First Amendment expressive association and substantive due process family association was explained in *Roberts* v. *United States Jaycees*, 468 U. S. 609 (1984).

> "Our decisions have referred to constitutionally protected 'freedom of association' in *two distinct senses*. In one line of decisions, the Court has concluded that choices

to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme. In this respect, freedom of association receives protection as a fundamental element of personal liberty. In another set of decisions, the Court has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion. The Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties." *Id.*, at 617-618 (emphasis added).

The First Amendment right of expressive association is limited to groups engaging in "expressive activity," but it "is not reserved for advocacy groups." *Boy Scouts of America* v. *Dale*, 530 U. S. 640, 648 (2000). However, incidental expressive activity is not sufficient to invoke constitutional scrutiny of regulation of a group. "It is possible to find a kernel of expression in almost every activity a person undertakes . . . ." *Dallas*, 490 U. S., at 25. The purpose of the right of expressive association is to protect the organization's ability to advocate viewpoints. See *Boy Scouts*, *supra*, at 650. "It is only when the association is predominantly engaged in protected expression that state regulation of its membership will necessarily affect, change, dilute, or silence one collective voice that would otherwise be heard." *Roberts*, 468 U. S., at 635-636 (O'Connor, J., concurring in part and concurring in the judgment). As important as the right to intimate association is, it has nothing to do with the presence of a collective voice in the marketplace of ideas.

Because family association is not a First Amendment right, see 4 R. Rotunda & J. Nowak, Treatise on Constitutional Law § 20.41, p. 522 (3d ed. 1999) (noting due process and connection to right of privacy as source), it is inappropriate to categorize the right claimed by the prisoners in the present case as a First Amendment association right. Any tangential expressive function of the family is satisfied in this case through the existence of alternative means of communication. Since the regulations do not prohibit letters, phone calls, or meetings with counsel, the prisoners' First Amendment rights remain intact. Cf. *Pell* v. *Procunier*, 417 U. S. 817, 823 (1974) (importance of alternate means of communication).

It is important to keep the First Amendment and the substantive due process analyses distinct. The First Amendment has a favored position in constitutional law. It is considered "the matrix, the indispensable condition, of nearly every other form of freedom." *Palko* v. *Connecticut*, 302 U. S. 319, 327 (1937). "Freedom of press, freedom of speech, freedom of religion are in a preferred position." *Murdock* v. *Pennsylvania*, 319 U. S. 105, 115 (1943), overruled on other grounds in *Texas Monthly, Inc.* v. *Bullock*, 489 U. S. 1, 21 (1989). The favored position is reflected by how this Court reviews First Amendment challenges to government actions. In order to protect the most revered constitutional right,

> "the Court has applied a narrowed presumption of constitutionality, strictly construed statutes to avoid limiting First Amendment freedoms, restricted prior restraint and subsequent punishment, relaxed general requirements of standing to sue and generally set higher standards of procedural due process in order to give vitality to those freedoms over ordinary governmental functions." Rotunda & Nowak, *supra*, § 20.7, at 258.

Since this is a prison case, not all of these advantages may be available for the prisoners and their families. Cf. *Pell*, 417 U. S., at 822 (incarceration leads to a loss of constitutional rights); *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U. S. 119, 125-126 (1977) (the most obvious First Amendment right lost by incarceration is association). But it is still important to keep the First Amendment and substantive due process distinct. Substantive due process has a controversial

background and does not share the First Amendment's favored position. See Part II-A, *infra*. Confusion between the First Amendment and substantive due process rights of association could spill outside prisoner rights, needlessly complicating the law and elevating the right to family association beyond what this Court intends. These two very different rights should be treated differently, and the First Amendment claims in this case should be dismissed.

II. There is no substantive due process right to family association in prison.

Protection of the nonexpressive component of relationships is found in this Court's substantive due process decisions. This aspect of due process typically protects family relationships. See *Roberts* v. *United States Jaycees*, 468 U. S. 609, 619-620 (1984). Several aspects of family life come within this right, including "marriage, childbirth, the raising and education of children, and cohabitation with one's relatives . . . ." *Id.*, at 619 (citations omitted). This Court has not yet recognized a substantive due process prison visitation right. The closest this Court has come to recognizing a right to visitation is when a plurality of this Court recognized a right to cohabit with relatives in *Moore* v. *East Cleveland*, 431 U. S. 494, 505-506 (1977). This is too slender a reed to support a right to prison visitation. With respect to substantive due process, prison visitation is a privilege, not a right.

A. The Problematic Doctrine.

Before considering whether to extend a right of family association to prison, this Court should consider the many difficulties posed by the doctrine of substantive due process. Beyond any oxymoronic problems posed by the right, see *Washington* v. *Glucksberg*, 521 U. S. 702, 756 (1997) (Souter, J., concurring); *United States* v. *Carlton*, 512 U. S. 26, 39 (1994) (Scalia, J., concurring), lies the more fundamental

problem of the indeterminancy of substantive due process. Because the rights deemed fundamental under substantive due process are not moored in any specific constitutional guarantee such as the Bill of Rights, this doctrine runs the risk of being a vehicle through which the personal preferences of individual judges are transformed into law. Courts and commentators agree. A particularly telling critique of this Court's fundamental rights jurisprudence is that the task of separating fundamental from nonfundamental rights "requires the judiciary to take normative and moral positions that cannot be demonstrated." Grano, Judicial Review and a Written Constitution in a Democratic Society, 28 Wayne L. Rev. 1, 25 (1981). Even though this Court has broken from the subjective natural law analysis found between the 1880's and 1937, its fundamental rights analysis remains subjective, and the modern opinions justifying substantive due process are "confusing." See 2 R. Rotunda & J. Nowak, Treatise on Constitutional Law § 15.7, p. 627 (3d ed. 1999). Lacking a reliable means of reining in judicial discretion makes substantive due process an often dangerous field for this Court to navigate. See *Albright* v. *Oliver*, 510 U. S. 266, 281 (1994) (Ginsburg, J., concurring).

This fear is justified. Some of the worst decisions have come when courts "substitute their own pleasure to the constitutional intentions of the legislature." See The Federalist No. 78, pp. 468-469 (C. Rossiter ed. 1961) (A. Hamilton). Due process was invoked to create a constitutional right to own slaves in a territory where Congress had abolished slavery. See *Dred Scott* v. *Sandford*, 60 U. S. (19 How.) 393, 450-451 (1857). Some of the most notorious attempts by this Court to have the final say over economic policy were based on substantive due process. In *Lochner* v. *New York*, 198 U. S. 45, 53, 57 (1905), the doctrine allowed this Court to find a constitutional right to liberty of contract that overrode a statutory maximum on working hours, while in *Adkins* v. *Children's Hospital of D. C.*, 261 U. S. 525, 559 (1923) substantive due process allowed this Court to strike down a minimum wage law. See *Glucksberg*, 521 U. S., at 760-761 (Souter, J., concurring).

This Court has become understandably reluctant to expand the frontiers of substantive due process.

> "But we 'have always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended.' *Collins* [v. *Harker Heights*], 503 U. S. [115], 125 [(1992)]. By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore 'exercise the utmost care whenever we are asked to break new ground in this field,' *ibid.*, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court, *Moore*, 431 U. S., at 502 (plurality opinion)." *Id.*, at 720 (majority opinion); see also *County of Sacramento* v. *Lewis*, 523 U. S. 833, 842 (1998).

The reluctance to expand substantive due process should be reinforced against efforts to expand it into our prisons. While not every right currently recognized as fundamental is lost by imprisonment, see *Turner* v. *Safley*, 482 U. S. 78, 95 (1987) (right to marry), prison is a particularly inappropriate context for the creation of substantive due process rights.[2] Constitutional protections are necessarily limited in prison. See *Shaw* v. *Murphy*, 532 U. S. 223, 229 (2001). "The limitations on the exercise of constitutional rights arise both from the fact of incarceration and from valid penological objectives—including deterrence of crime, rehabilitation of prisoners, and institutional security." *O'Lone* v. *Estate of Shabazz*, 482 U. S. 342, 348 (1987). Deterrence is a chief purpose of imprisonment. See

2. There is one fundamental right that is relevant to prison, the right to be free from restraining individual freedom through incarceration. See *DeShaney* v. *Winnebago County Dept. of Social Servs.*, 489 U. S. 189, 200 (1989). A valid conviction extinguishes this interest. See *Reno* v. *Flores*, 507 U. S. 292, 316 (1993) (O'Connor, J., concurring).

Rhodes v. *Chapman*, 452 U. S. 337, 352 (1981); 18 U. S. C. § 3553(a)(2)(B). A prison that fails to punish cannot deter and thus fails its basic function. Finally, federalism also limits federal judicial supervision of state prisons in the name of prisoner rights. Prisons are central to the state's most important function, protecting its citizens. "It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Preiser* v. *Rodriguez*, 411 U. S. 475, 491-492 (1973). Therefore, "the federal courts do not sit to supervise state prisons, the administration of which is of acute interest to the States." *Meachum* v. *Fano*, 427 U. S. 215, 229 (1976).

Running a prison is an extraordinarily difficult task. Administrators have to ensure punishment, maintain security, and respect the rights retained by the prisoners. Recognizing the many problems of prison administration, this Court gives considerable deference to the prison administrators. "Because the realities of running a penal institution are complex and difficult, we have also recognized the wide-ranging deference to be accorded the decisions of prison administrators." *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U. S. 119, 126 (1977). Deference is necessary

> "if 'prison administrators . . . , and not the courts, [are] to make the difficult judgments concerning institutional operations.' Subjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration." *Turner* v. *Safley*, 482 U. S. 78, 89 (1987) (quoting *Jones*, 433 U. S., at 128).

Unfortunately, there are too many examples of lower federal courts failing to give proper deference to the prison administration. Courts have dictated the type of detergent (Boraxo) and its dilution (one-half cup per gallon of water) used in cleaning, see M. Boot, Out of Order 138 (1998), and ordered that

prisoners be allowed to retain six issues of monthly magazines for up to three months, see Chilton & Talarico, Politics and Constitutional Interpretation in Prison Reform Litigation: The Case of *Guthrie* v. *Evans*, in Courts, Corrections, and the Constitution 117 (J. DiIulio ed. 1990), or declared a right to have a subscription to Playboy and possess hot pots in cells. See *Hook* v. *State of Arizona*, 120 F. 3d 921, 923 (CA9 1997).

Sometimes these excesses are cured by higher courts. The Ninth Circuit modified the extraordinarily invasive District Court order in *Hook*. See *id.*, at 926. In *Lewis* v. *Casey*, 518 U. S. 343 (1996), this Court struck down an order that

> "specified in minute detail the times that libraries were to be kept open, the number of hours of library use to which each inmate was entitled (10 per week), the minimal educational requirements for prison librarians (a library science degree, law degree, or paralegal degree), the content of a videotaped legal-research course for inmates (to be prepared by persons appointed by the Special Master but funded by ADOC), and similar matters." *Id.*, at 347.

These are not isolated cases. "Rather, the prison cases constitute a rapid, inexorable procession of discrete decisions, formulated by federal trial courts throughout the nation and affirmed repeatedly at the appellate level." M. Feeley & E. Rubin, Judicial Policy Making and the Modern State 19 (2000). "The Constitution charges federal judges with deciding cases and controversies, not with running state prisons. Yet too frequently federal district courts in the name of the Constitution effect wholesale takeovers of state correctional facilities and run them by judicial decree." *Lewis*, 518 U. S., at 364 (Thomas, J., concurring). The results are often disastrous to society, administrators, guards, and even the prisoners. See W. Hagedorn, The Consequences of Federal District Court Intervention into Prisons and Jails: Philadelphia, Texas, and Arizona 2-7 (Brookings Institution 1995); DiIulio, The Old Regime and the *Ruiz* Revolution: The Impact of Judicial Intervention on Texas Prisons, in Courts, Corrections, and the Constitution, *supra*, at

51, 69-70; Engel & Rothman, The Paradox of Prison Reform: Rehabilitation, Prisoners' Rights, and Violence, 7 Harv. J. L. & Pub. Pol'y 413, 431 (1984).

The wholesale importation of substantive due process concepts into prison would guarantee even more judicial meddling. The imprecisely defined guarantees of the Eighth Amendment's cruel and unusual punishment prohibition have already been a fertile source of judicial intervention into prisons. See Cripe, Courts, Corrections and the Constitution: A Practitioner's View, in Courts, Corrections, and the Constitution, *supra*, at 271-272. Substantive due process poses greater risks. With less textual mooring than this Court's Eighth Amendment jurisprudence, it is more likely that courts will substitute their version of the common good for what the Constitution demands. This Court's natural wariness about extending substantive due process should be sharpened in the context of prison litigation. Although *Turner* demonstrates that not all substantive due process guarantees are lost by imprisonment, this Court should be most reluctant to extend this doctrine any further inside the prison. A conviction that comports with the requirements of procedural due process necessarily places severe limits on one's rights under substantive due process.

B. A Privilege, Not A Right.

In *Turner* v. *Safley*, *supra*, this Court advanced a four-part test for reviewing prisoners' constitutional claims. See 482 U. S., at 89-90. The *Turner* standard operates under the assumption that the regulations being analyzed conflict with a constitutional right that might extend to prison life. "[W]hen a prison regulation *impinges* on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Id.*, at 89 (emphasis added). The four-part test determines whether the regulation is in fact reasonable. See *id.*, at 89-90. While *Turner* provides an appropriate framework for analyzing conflicts between prisoners' rights and

administrative needs, it is not relevant to every constitutional claim made by a prisoner. If the alleged constitutional right does not extend into prison, then *Turner* is inapposite. *Turner* is not relevant to this case because whatever right to family association may be guaranteed by due process does not extend to a right to prison visitation.

Any substantive due process theory of the prisoners must rely upon *Moore* v. *East Cleveland*, 431 U. S. 494 (1977). This case confronted a patently unfair ordinance that limited occupancy of dwellings to members of a single, very narrowly defined family. See *id.*, at 495-496 (plurality). Mrs. Moore was jailed and fined under the ordinance for having her grandson live with her after his mother's death due to the presence of the boy's uncle and cousin in the same household. See *id.*, at 497. The plurality held that this violated substantive due process by forcing people to live "in certain narrowly defined family patterns." *Id.*, at 506. The plurality derived support for its holding from decisions protecting "the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition." *Id.*, at 503. The family allows society to "inculcate and pass down many of our most cherished values, moral and cultural." *Id.*, at 503-504. The tradition of respect was not limited to nuclear families, see *id.*, at 504, as non-nuclear families were also worthy of protection. See *id.*, at 504-505. According to the plurality, this reliance on tradition placed appropriate limits on substantive due process. See *id.*, at 503. This was the extent of the plurality's analysis in support of its decision. The remaining analysis was devoted to a discussion of substantive due process and the risks of judicial overreaching. See *id.*, at 500-502. The fifth vote for reversing Mrs. Moore's conviction was supplied by Justice Stevens' concurrence, which concluded that East Cleveland's unprecedented zoning regulation "constitutes a taking of property without due process and without just compensation." *Id.*, at 521 (Stevens, J., concurring).

Moore is a difficult case. The ordinance is indefensible, but the analysis for overturning it is thin. Compounding this problem is the fact that the case provides no majority rule beyond its facts. The rule that the narrowest opinion in a split decision provides the majority rule, see *Marks* v. *United States*, 430 U. S. 188, 193 (1977), is sometimes "more easily stated than applied," see *Nichols* v. *United States*, 511 U. S. 738, 745 (1994), and so it is in *Moore*. It is not clear which of the two opinions is narrower. Since there is little, if any, common ground between Justice Stevens' takings analysis and the plurality's approach, the better view is that *Moore* provides no precedent other than what can be drawn from its facts. See generally Brief for Criminal Justice Legal Foundation as *Amicus Curiae* in *Grutter* v. *Bollinger*, No. 02-241. *Moore* only establishes that the government may not prevent an extended family from living together on land that is zoned for dwellings.

Any attempt to expand *Moore* to support a right to prison visitation must confront *Kentucky Department of Corrections* v. *Thompson*, 490 U. S. 454 (1989). *Thompson* addressed whether Kentucky prison regulations gave inmates a protected liberty interest in receiving certain visitors. See *Id.*, at 455.[3] Before addressing that issue, this Court addressed whether the Due Process Clause itself guaranteed prison visitation. The answer was an emphatic "no."

> "Respondents do not argue—nor can it seriously be contended, in light of our prior cases—that an inmate's interest in unfettered visitation is guaranteed directly by the Due Process Clause. We have rejected the notion that '*any* change in the conditions of confinement having a substantial adverse impact on the prisoner involved is sufficient to invoke the protections of the Due Process Clause.' (Emphasis in original.) *Meachum* v. *Fano*, 427 U. S. 215, 224

3. *Thompson*'s approach to protected liberty interests was abandoned in *Sandin* v. *Conner*, 515 U. S. 472, 483, n. 5 (1995).

(1976). This is not to say that a valid conviction extinguishes every direct due process protection; 'consequences visited on the prisoner that are qualitatively different from the punishment characteristically suffered by a person convicted of crime' may invoke the protections of the Due Process Clause even in the absence of a state-created right. *Vitek* v. *Jones*, 445 U. S. 480, 493 (1980) (transfer to mental hospital). However, '[a]s long as the conditions or degree of confinement to which the prisoner is subjected is within the sentence imposed upon him and is not otherwise violative of the Constitution, the Due Process Clause does not in itself subject an inmate's treatment by prison authorities to judicial oversight.' *Montanye* v. *Haymes*, 427 U. S. 236, 242 (1976). The denial of prison access to a particular visitor 'is well within the terms of confinement ordinarily contemplated by a prison sentence,' *Hewitt* v. *Helms*, 459 U. S. [460,] 468 [(1983)], and therefore is not independently protected by the Due Process Clause." *Id.*, at 460-461.

Since the quoted passage only rejected an "unfettered" right of visitation, it is not controlling. Nonetheless, if prison visitation was "implicit in the concept of ordered liberty" so that "neither liberty nor, justice would exist if [it] were sacrificed," *Palko* v. *Connecticut*, 302 U. S. 319, 325, 326 (1937), overruled on other grounds in *Benton* v. *Maryland*, 395 U. S. 784, 793 (1969), or "deeply rooted in this Nation's history and tradition," *Moore*, 431 U. S., at 503 (plurality), the *Thompson* Court would have mentioned it. Since there is no fundamental right to prison visitation, this Court could summarily dismiss the notion that due process guarantees unfettered visitation.

History and tradition support the lack of precedent for any right to visitation. "Historically, there have been highly restrictive practices imposed on correspondence and visiting by prison administrators." S. Brodsky, Families and Friends of Men in Prison 5 (1975). Prisons as we now know them did not

exist when the Constitution was ratified. Imprisonment was not a typical punishment in the colonial era. See T. Blomberg & K. Lucken, American Penology 29 (2000). Colonial jails did not punish, but simply held prisoners awaiting trial. See *id.*, at 32-33. Prisons at the Constitution's founding were few, dreary, and overwhelmed with prisoners. See *id.*, at 44. The first prisons, developed during the 1830's, were designed to isolate the offender from society in order to prevent the spread of the disease of criminality. See *id.*, at 53. In these facilities, the prisoners "were forbidden to have any contact whatsoever with their families, because familial influence was considered 'corrupting.'" S. Christianson, With Liberty for Some 144-145 (1998). Some institutions eventually relaxed rules against outside contact. "By the 1840's, Sing Sing was allowing convicts to send one letter every six months, provided it was penned by the chaplain and censored by the warden. Each prisoner was also permitted to have one visit from his relatives during his sentence, provided it was properly supervised." *Id.*, at 145. Reform movements ameliorated some of the harshness of early prisons, but visitation was still heavily restricted. A common approach was to segregate prisoners according to how they were progressing on the road to reform. Those in the lower class, the third grade, were denied visitation privileges. See Blomberg & Lucken, at 72.

While visitation became much more common after World War II, see *id.*, at 110, it still is often difficult, and typically subject to extensive regulation by the prison administration. Commentators frequently complain about the difficulty many families have in visiting their imprisoned family members due to geography and prison regulations. See, *e.g.*, Christianson, *supra*, at 301; 2 M. Mushlin, Rights of Prisoners § 12.00, p. 88 (2d ed. 1993); Hardwick, Punishing the Innocent: Unconstitutional Restrictions on Prison Marriage and Visitation, 60 N. Y. U. L. Rev. 275, 280 (1985).

Imprisonment necessarily limits the prisoner's family contacts. Isolation is a necessary consequence of imprison-

ment. See *Pell* v. *Procunier*, 417 U. S. 817, 822 (1974). "Perhaps the most obvious of the First Amendment rights that are necessarily curtailed by confinement are those associational rights that the First Amendment protects outside of prison walls." *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U. S. 119, 125 (1977). Like its First Amendment counterpart, family association is the most obvious substantive due process right taken away by imprisonment.

This Court has upheld prison policies that place severe burdens on family visitation. *Olim* v. *Wakinekona*, 461 U. S. 238, 240-241 (1983), addressed the transfer of a prisoner from a prison outside of Honolulu, Hawaii, to Folsom State Prison, just outside of Sacramento, California. The Ninth Circuit held that the Hawaii regulations had created a constitutionally protected liberty interest that had been violated in the transfer. See *id.*, at 243. This Court addressed this issue and "whether the Due Process Clause in and of itself protects against interstate prison transfers . . . ." *Id.*, at 244. A prisoner "has no justifiable expectation that he will be incarcerated in any particular State." *Id.*, at 245. Interstate transfer was a fact of life in the federal system and occurred in many state systems. See *id.*, at 245-247. The extraordinary distance involved did not change the analysis. See *id.*, at 247. Most importantly, the grave effects this would have on family visitation were irrelevant to the due process analysis.

> "Respondent's argument to the contrary is unpersuasive. The Court in *Montanye* took note that among the hardships that may result from a prison transfer are separation of the inmate from home and family, separation from inmate friends, placement in a new and possibly hostile environment, difficulty in making contact with counsel, and interruption of educational and rehabilitative programs. 427 U. S., at 241, n. 4. These are the same hardships respondent faces as a result of his transfer from Hawaii to California." *Id.*, at 248, n. 9.

Montanye v. *Haymes*, 427 U. S. 236 (1976) upheld an intrastate prison transfer made for disciplinary reasons. See *id.*, at 243. The Court of Appeals had found that the transfer placed significant hardship on the prisoner because it moved him several hundred miles from his home and family. *Id.*, at 241, n. 4. As in *Olim*, this consideration had no constitutional significance.

Prison visitation is not protected as a fundamental right under substantive due process. There is no history and tradition of family visitation. While prisons have allowed family visitation, heavy regulation is a fact of life in many prisons. See Mushlin, *supra*, § 12.00, at 88; *infra*, at 26. This Court has repeatedly upheld regulations that have substantially diminished the prisoner's ability to receive visitors. Even a commentator sympathetic to prisoner rights notes that "locating a constitutional anchor for [prison visitation] is a formidable task." *Id.*, § 12.01, at 88. The fact that this Court has not even hinted at a right to visitation even when presented with the opportunity to do so is telling. "The mere novelty of such a claim is reason enough to doubt that 'substantive due process' sustains it; the alleged right certainly cannot be considered ' "so rooted in the traditions and conscience of our people as to be ranked as fundamental." ' " *Reno* v. *Flores*, 507 U. S. 292, 303 (1993) (quoting *United States* v. *Salerno*, 481 U. S. 739, 751 (1987) (quoting *Snyder* v. *Massachusetts*, 291 U. S. 97, 105 (1934))). If there is any national tradition with regard to prison visitation, it is that visitation is not a right but a privilege.

The other lines of substantive due process inquiry do not change the result. Executive branch action can violate substantive due process if it is so egregious that it "shocks the conscience." *County of Sacramento* v. *Lewis*, 523 U. S. 833, 846 (1998). This inquiry is more appropriate under the Eighth Amendment than substantive due process. If a specific constitutional provision such as the Fourth or Eighth Amendment may cover a claim, then the constitutional analysis should focus on the specific constitutional provision rather than substantive

due process. See *United States* v. *Lanier*, 520 U. S. 259, 272, n. 7 (1997). The Eighth Amendment provides an adequate means of analyzing any conduct of prison officials that might shock the conscience. See *Whitley* v. *Albers*, 475 U. S. 312, 327 (1986).

Nor are the regulations arbitrary. See *Lewis*, 523 U. S., at 846. These regulations are intended to allow the administration to conserve scarce resources, to control the visiting environment, and to deter drug use by prisoners. This is not "government power arbitrarily and oppressively exercised." *Ibid.* Since there is no fundamental right to prison visitation, the regulations do not violate substantive due process.

III. Withdrawal of prisoners' visitation privileges for twice violating prison substance abuse policies does not violate the Eighth Amendment.

The Court of Appeals in the present case held that depriving an inmate of visitation privileges for a minimum of two years for repeat major misconduct violations constitutes cruel and unusual punishment as prohibited by the Eighth Amendment. See *Bazzetta* v. *McGinnis*, 286 F. 3d 311, 322 (CA6 2002). In *Wilson* v. *Seiter*, 501 U. S. 294 (1991), this Court established the perimeters for establishing an Eighth Amendment claim for situations involving alleged unconstitutional prison conditions. Specifically, an inmate making such allegations must prove that the conditions are objectively " 'sufficiently serious' " and that the conditions are a result of culpable acts by prison officials. See *Farmer* v. *Brennan*, 511 U. S. 825, 834 (1994) (quoting *Wilson*, 501 U. S., at 298). The latter subjective part of the analysis has been construed to require " 'deliberate indifference' " on the part of the prison official. *Id.*, at 834 (quoting *Wilson*, 501 U. S., at 303). Although the Sixth Circuit applied

this test, the analysis was summary, incorrect, and almost unique.[4] There is no Eighth Amendment violation here.

In *Hudson* v. *McMillian*, 503 U. S. 1 (1992), this Court explained the objective portion of the analysis. This prong requires the inmate to prove some extreme deprivation. *Id.*, at 8-9; see also *Wilson*, 501 U. S., at 298 (stating the test as whether the deprivation was sufficiently serious). "Because routine discomfort is 'part of the penalty that criminal offenders pay for their offenses against society,' *Rhodes*, [v. *Chapman*, 452 U. S. 337], 347 [(1981)], '*only those deprivations denying "the minimal civilized measure of life's necessities" are sufficiently grave to form the basis of an Eighth Amendment violation.*' " *Hudson*, 503 U. S., at 9 (quoting *Wilson*, 501 U. S., at 298 (quoting *Rhodes*, 452 U. S., at 347)) (emphasis added).

What constitutes the "minimal civilized measures of life's necessities" was best described by this Court in a case contrasting requirements of custody with the government's obligations to the general population:

> "When the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and well being. . . . The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for *his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety*—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause." *DeShaney* v. *Winnebago County Dept. of Social Servs.*, 489

4. Besides the Sixth Circuit, the only other court to state that a total denial of visitation would violate the Eighth Amendment was in *Laaman* v. *Helgemoe*, 437 F. Supp. 269, 322 (D NH 1977), and that statement was made in dicta.

U. S. 189, 199-200 (1989) (emphasis added); see also *Wilson*, 501 U. S., at 304 (identifying examples of basic human needs as food, warmth, and exercise); *Farmer*, 511 U. S., at 858 (Blackmun, J., concurring) (prison conditions case citing *DeShaney*).

Although visitation from family or friends is important to inmates, see *Block* v. *Rutherford*, 468 U. S. 576, 589 (1984), it is not on the same level as the life's necessities identified in *DeShaney*. In fact, "[i]nactivity, lack of companionship and a low level of intellectual stimulation do not constitute cruel and unusual punishment." *Bono* v. *Saxbe*, 620 F. 2d 609, 614 (CA7 1980). Furthermore, those inmates who receive the ban on visitation still retain the privilege of phone calls and letter writing to keep in contact with those friends and family members outside the prison walls. Throughout its opinion, the District Court relied heavily on expert opinion regarding the importance of visitation to an inmate's mental health, family relationships, and rehabilitation efforts. See *Bazzetta* v. *McGinnis*, 148 F. Supp. 2d 813, 851-853 (ED Mich. 2001). This Court must keep in mind, however, that reference to such expert opinion, although helpful and informative, does " 'not establish the constitutional minima' " and does not weigh very heavily in determining what constitutes contemporary standards of decency under the objective component of the applicable Eighth Amendment analysis. See *Rhodes* v. *Chapman*, 452 U. S. 337, 348-349, n. 13 (1981).

This Court has never held that an inmate has an absolute right to visitation. Rather, case law directs just the opposite. See *Kentucky Dept. of Corrections* v. *Thompson*, 490 U. S. 454, 460-461 (1989); *supra*, at 17-18. This Court also held in *Block*, 468 U. S., at 589, that pretrial detainees have no constitutional right to contact visits. In both *Thompson* and *Block*, the rationale underlying those decisions revolved around the well-established principle that "the safe and efficient operation of a prison on a day-to-day basis has traditionally been entrusted to

the expertise of prison officials . . . ." *Hewitt* v. *Helms*, 459 U. S. 460, 470 (1983).

The prison officials in Michigan have determined that the best way to run their prison is to take away the visitation privileges of those prisoners who take it upon themselves to violate the prison's substance abuse policies more than once. Incarceration in and of itself brings about the necessary withdrawal of privileges and rights which is justified by considerations underlying the penal system. *Jones* v. *North Carolina Prisoners' Labor Union, Inc.*, 433 U. S. 119, 125 (1977). Punishing inmates "effectuates prison management and prisoner rehabilitative goals" and "[d]iscipline by prison officials in response to a wide range of misconduct falls within the expected perimeters of the sentence imposed by a court of law." *Sandin* v. *Conner*, 515 U. S. 472, 485 (1995); see also *Sumner* v. *Shuman*, 483 U. S. 66, 84 (1987) (noting the "deprivation of privileges of . . . socialization" as an available and appropriate sanction).

Regardless of why an inmate is in prison, prison officials should have the right to determine how to punish those inmates if they choose to break prison rules. In this case, prison officials decided that the appropriate punishment for violating the prison's substance abuse policies on two or more incidents is to take away visitation privileges. If it is not cruel and unusual punishment to put a person in prison for violating a *state* substance abuse law, then why should it be cruel and unusual to further restrict the liberty of an inmate who violates a substance abuse rule even while incarcerated. In other words, if a person violates a state substance abuse law, he or she loses his or her freedom to visit with people outside of prison when sentenced by a court of law to jail time. If an inmate violates a prison substance abuse policy, similar consequences do not violate the Eighth Amendment. "Prison is a society in miniature with its own rules of conduct and its own punishment for their violation." 1 M. Mushlin, Rights of Prisoners § 9.00, p. 422 (2d ed. 1993). Because the inmate's freedom is already

deprived, the next logical step is to restrict visitation with people outside of the prison walls again. The ability to punish a person for violating a rule or regulation should not stop at the prison gates.

This Court has held that not all restrictive or harsh conditions of confinement violate the Eighth Amendment. Rather, "conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional. To the extent that such conditions are restrictive and even harsh, *they are part of the penalty that criminal offenders pay for their offenses against society*." *Rhodes* v. *Chapman*, 452 U. S. 337, 347 (1981) (emphasis added). In this case, under Michigan's regulations it is the inmates who bring the withdrawal of visitation privileges upon themselves. The inmates hold the keys to their visitation privileges. If they decide to disobey the prison's rules regarding substance abuse in the prison on two or more occasions, then they themselves cut off any future visitation from friends or family. The fact that they are repeat offenders makes them even more deserving of punishment. See *Rummel* v. *Estelle*, 445 U. S. 263, 284 (1980); *Solem* v. *Helm*, 463 U. S. 277, 296 (1983). Conversely, those inmates who abide by prison rules keep their visitation privileges. Prison officials have decided that the best way to curtail substance abuse within the prison walls is to discipline those who cause the problems to occur in the first place.

The Sixth Circuit incorrectly focused on the title of the visitation ban. Rather than focus on the substance of the regulation, the Sixth Circuit homed in on the word "permanent" and held that a permanent ban is an "extremely harsh measure" and "[i]t far exceeds punishments meted out by any other state prison system for comparable violations." *Bazzetta*, 286 F. 3d, at 322-323. The substance of the regulation states that the ban is not in fact permanent, but rather the ban can be lifted after a minimum of two years. See *Bazzetta*, 148 F. Supp. 2d, at 833-834 (stating the substance of the regulation in full). Either the warden or the restricted inmate can file a written request to have

the ban lifted. *Ibid.* A minimum two-year ban is not overly harsh and is comparable to punishments imposed upon inmates housed in correctional institutions in other states. See Brief for States of Colorado, et al., as *Amicus Curiae* in Support of Petition for Writ of Certiorari 1, n. 1 (listing rules and regulations of several states with similar restrictions on prison visitation).

Thus, the decision to withdraw visitation privileges as a means to curtail substance abuse in Michigan prisons is appropriately within the purview of prison officials. If an inmate makes a conscious decision to abide by the prison's substance abuse regulations because he or she values visitation as a sufficiently important privilege, then that inmate can and will avoid the possibility of having those privileges withdrawn. Since withdrawing visitation privileges for a minimum of two years does not constitute a deprivation of one of the "minimal civilized measures of life's necessities," the regulation is objectively reasonable. The attack on it fails to satisfy the first prong required for a successful Eighth Amendment challenge. See *Farmer* v. *Brennan*, 511 U. S., at 834.

Farmer explained the subjective portion of *Wilson*'s two-part test. See *ibid.* To satisfy this prong, the inmate must prove that the prison officials acted with "deliberate indifference." See *Hudson*, 503 U. S., at 5; *Estelle* v. *Gamble*, 429 U. S. 97, 104 (1976) (deliberate indifference to a prisoner's serious medical needs constitutes cruel and unusual punishment).

> "[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official *knows of and disregards an excessive risk to inmate health or safety*; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer*, 511 U. S., at 837.

In *Farmer*, this Court dealt with a situation where a biologically male transsexual inmate who projected " 'feminine

[redacted]

characteristics' " was placed in a federal penitentiary with the general male population. *Id.*, at 829. There the inmate was beaten and sexually assaulted by another inmate. *Id.*, at 830. The inmate filed suit against the prison officials arguing that they had violated his Eighth Amendment rights in that the officials were deliberately indifferent to the inmate's safety. *Id.*, at 831. This Court held that a prison official can be held liable "only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it." *Id.*, at 847.

Carelessly throwing a transsexual inmate with feminine characteristics into the general male prison population is a far cry from the present case. There is no evidence that the Michigan prison officials subjectively knew that withdrawing visitation privileges for a minimum of two years would cause a substantial risk of serious harm to the inmates' health or safety, and with that knowledge, they knowingly failed to take reasonable measures to abate that risk.

In summarily addressing this issue, the Sixth Circuit simply stated, "[t]he second condition is also met, for the harm the ban does prisoners should be clear to any prison official minimally concerned with prisoners' welfare." *Bazzetta*, 286 F. 3d, at 323. The Sixth Circuit misconstrued this subjective element of the test. Purposely withholding medical care, see *Estelle*, or purposely placing an inmate in a situation where he or she is highly likely to be assaulted, see *Farmer*, is the kind of mistreatment that the Eighth Amendment is intended to prohibit. The prison officials' lack of action in both *Estelle* and *Farmer* could lead to the inmate's death or serious injury. The prison officials' lack of action in *Bazzetta* would not. A loss of contact with those outside prison is an inevitable consequence of imprisonment; being deprived of medicine or being knowingly placed in harm's way is not, and the Eighth Amendment preserves that distinction. Any risk to the mental health of prisoners is too tenuous to be an Eighth Amendment concern.

Because withdrawing visitation privileges for a minimum of two years does not constitute the level of deliberate indifference as required by *Farmer*, the regulation is subjectively reasonable, and the respondents' claim also fails the second prong required for a successful Eighth Amendment challenge.

> "This court must proceed cautiously in making an Eighth Amendment judgment because, unless we reverse it, '[a] decision that a given punishment is impermissible under the Eighth Amendment cannot be reversed short of a constitutional amendment,' and thus '[r]evisions cannot be made in the light of further experience.' *Gregg* v. *Georgia*, 428 U. S. [153], 176 [(1976)]. In assessing claims that conditions of confinement are cruel and unusual, courts must bear in mind that their inquiries 'spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility.' *Bell* v. *Wolfish*, 441 U. S. [520], 539 [(1979)]." *Rhodes*, 452 U. S., at 351.

Therefore, withholding visitation privileges for a minimum of two years is a valid means of prison discipline that is used by many states. See *supra*. Not only do the inmates hold the key to their own access to or lack of visitation privileges, but those whose privileges are revoked have the opportunity to get them back after two years, and they continue to have the ability to communicate through phone calls and letters. The inmates' claims in this case fail both the objective and subjective component of a successful Eighth Amendment prison conditions challenge, and thus the regulations do not run afoul of the Eighth Amendment's prohibition of cruel and unusual punishment.

CONCLUSION

The decision of the United States Court of Appeals for the Sixth Circuit should be reversed.

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Respectfully submitted,

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